

EXHIBIT A

UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF SOUTH DAKOTA
 NORTHERN DIVISION

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NORTHERN VALLEY COMMUNICATIONS, L.L.C., a South Dakota limited liability company,	*	Case No. 1:14-cv-01018
	*	
	*	MOTION HEARING
	*	
Plaintiff,	*	
	*	
-vs-	*	
	*	
AT&T CORP.,	*	
a New York corporation.	*	
	*	
Defendant.	*	
	*	

* * * * *

TIME AND PLACE: January 23, 2017
 U.S.District Court
 225 S. Pierre St.
 Pierre, SD 57501

BEFORE: HON. ROBERTO A. LANGE
 U.S. District Court
 225 S. Pierre St.
 Pierre, SD 57501

APPEARANCES: MR. JAMES M. CREMER
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(continued)

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6 ATTORNEY FOR THE DEFENDANT

7 ALSO PRESENT:

MR. JAMES GROFT - CEO NVC
MR. BILL TROSKE - BOARD MEMBER NVC
8 MR. ROGER ZASTROW - BOARD MEMBER NVC
MR. BOB WEGNER - BOARD MEMBER NVC
9

10 COURT REPORTER:

MS. CHERYL A. HOOK, RMR, CRR
U.S. District Court
225 S. Pierre St. #420
11 Pierre, SD 57501
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1 equivalent for a CLEC when a CLEC provides access services.

2 So to the extent possible, the definitions, both of
3 access, customer, end user, things like that, searched for
4 definitions that were used by the FCC, either in their
5 regulations or in orders, and adopted those definitions in
6 order to, again, try to avoid confusion.

7 If I may add, the dispute resolution provision of
8 the tariff is, in fact, a carefully tailored provision that
9 was objected to by Sprint and Qwest but ultimately allowed to
10 become effective, and it sought to avoid the exact scenario
11 that we're here about today in which a carrier withholds
12 payment without providing the reasons for withholding and then
13 makes up the reasons as they go along. And so that dispute
14 resolution provision is, again, custom tailored, very closely
15 scrutinized by the FCC before it was allowed to become
16 effective and deemed lawful.

17 **THE COURT:** What percent of the calls of Northern
18 Valley Communications are involving the IXC-AT&T versus the
19 other approximately 14?

20 **MR. CARTER:** Your Honor, I don't have current
21 statistics today, and it's somewhat challenging for me to
22 answer that question directly, in part, because it depends on
23 how much wholesale traffic AT&T voluntarily accepts onto its
24 network.

25 And what we saw is that the time in which AT&T began

1 withholding in March of 2013, AT&T had experienced a vast
2 increase in the amount of wholesale traffic they delivered to
3 Northern Valley for carriers, such as T-Mobile and others,
4 which they did not have to deliver, that they took on this
5 traffic voluntarily.

6 And so, as a result of that, it's difficult to
7 pinpoint any particular number, but I would say that the
8 volume of traffic that AT&T sends in general is in the 20 to
9 30 percent range of the traffic; but it sometimes, again, can
10 go higher when they go out and attract more wholesale traffic
11 to their network.

12 **THE COURT:** Wholesale traffic -- you give T-Mobile
13 as an example -- is this cellular phone type traffic?

14 **MR. CARTER:** It could be any other company that
15 needs to deliver their traffic to Northern Valley.

16 And so long-distance carriers don't all build lines
17 all over the country. They build lines in certain markets;
18 but in other markets what they'll do is, they'll pass the
19 traffic off to another sort of incumbent carrier like AT&T and
20 have AT&T carry that traffic for them. And so that is a
21 competitive marketplace in which it is not governed by
22 tariffs.

23 So the obligation of a company like AT&T, or here
24 CenturyLink, to carry another carrier's traffic for them is a
25 completely negotiated transaction.

1 And indeed -- when Mr. Hunseder said that he does
2 not believe AT&T makes any money on this and tried to talk
3 about unlimited long-distance plans, it seems to be that he is
4 ignoring the important part of the record about the
5 significant volumes of traffic and the associated revenues
6 that AT&T received directly for voluntarily carrying traffic
7 to Northern Valley's destination.

8 **THE COURT:** How did your expert -- or whomever --
9 arrive at a \$50 million figure for AT&T's income associated
10 with Northern Valley business since they stopped paying the
11 per-mile charges?

12 **MR. CARTER:** Sure. So that -- that factor -- I
13 believe -- let me -- to clarify, the \$50 million, I believe,
14 is gross, and \$30 million is the net that our experts
15 calculated. \$9 million of that would -- excuse me --
16 8.2 million of that is solely revenues associated with the
17 wholesale traffic.

18 So basically the amount of money that AT&T would
19 owe, had they just paid the bills on time, is about equal to
20 the amount of money that they've received on wholesale
21 contracts alone.

22 **THE COURT:** I thought if they had paid the bills of
23 Northern Valley it was something like \$15 million. Is there
24 an in component that you built into that figure, or what?

25 **MR. CARTER:** That's correct. That's correct, Your

1 Honor.

2 **THE COURT:** It's a pretty hefty interest component.

3 **MR. CARTER:** At the time we filed the -- the
4 number -- the briefs, \$9 million was the amount pre-interest,
5 and then the residual was amounts that are accrued pursuant to
6 the tariff provisions there.

7 The calculation of the amount that AT&T received as
8 revenues, it involved an analysis of both AT&T's per-minute
9 plan. So there are, in fact, some customers that still pay
10 AT&T for each minute of traffic when they call -- make a
11 long-distance phone call. So those are pretty easy to
12 segregate.

13 And then the unlimited long-distance plan that
14 Mr. Hunseder mentioned, of course, are more difficult to
15 segregate; but AT&T's position is that it means they get no
16 value, that they -- that for unlimited long-distance
17 subscribers there's no value to AT&T when they deliver traffic
18 to Northern Valley. But, of course, that would be the case if
19 they deliver traffic to anyone, right? Because it's an
20 unlimited long-distance plan.

21 So they seek to assign no value to that. We seek to
22 apportion the value, right? So looking at what it is the
23 customer subscribed to, what percentage of traffic went to
24 Northern Valley's destination, and coming up with a per-minute
25 rate that can be applied. And so that's what our experts did.

1 And then from that, they deducted the appropriate expenses
2 that AT&T incurred in providing their services and the
3 traffic.

4 And so that's how we arrived at the \$30 million
5 being the net profit calculation.

6 **THE COURT:** All right. AT&T at one point in their
7 briefing referred to something like 99 percent of Northern
8 Valley Communications' business being access stimulation. I
9 didn't know whether that was hyperbole or not. Is it indeed
10 something like 99 percent is these conference calling and free
11 calling type organizations?

12 **MR. CARTER:** I think it's fair to say it's certainly
13 over 90 percent. I mean, I don't think that we have an exact
14 calculation. Again, it would depend on the day, but it's
15 certainly very high.

16 And if I could -- if I could make a point about
17 that, though, Your Honor. When the FCC adopted the Connect
18 America Fund rules, there was a point in which the company,
19 Northern Valley, had to make a decision. Do we proceed
20 forward with access stimulation under the new rules and bring
21 the rates that we charge down significantly? Or, do we
22 instead not proceed with access stimulation and continue to
23 then be able to charge the higher rural benchmark rates that
24 would otherwise be applicable to Northern Valley?

25 And so they -- and we have both the CEO and members

1 of the board -- did an analysis. They did an analysis because
2 ultimately Northern Valley is owned by a cooperative. Its
3 mission is to try to determine how best they can serve the
4 community in which they operate, how they can provide the
5 latest and most advanced services to that community.

6 And so they did an analysis, and the analysis was
7 close. It wasn't by any means a windfall in which, if they
8 just continued to engage in access stimulation, they would
9 make a lot more money; rather, it was a prudent decision based
10 on the fact that we finally had clarity of the new rules.

11 And the AT&T withholding that has occurred over the
12 past few years does, in fact, disrupt that reasonable business
13 choice that Northern Valley and the board of directors made in
14 deciding to forego much higher per-minute charges that it
15 could have collected under -- under the tariff. It did not
16 engage in access stimulation as compared to the much lower
17 rates; it does collect on the higher volumes of traffic.

18 So it is a delicate equilibrium there that was an
19 intentional choice once the FCC had clarified the rules of the
20 road.

21 **THE COURT:** All right. I'd like to get into whether
22 the tariff is enforceable. And one of the arguments that was
23 made by Mr. Hunseder is that the 2008 decision -- I think it's
24 PrairieWave; he called it PrairieView at times, but I think
25 it's PrairieWave -- is one that ought to be read to require a

1 UNITED STATES DISTRICT COURT
 2 DISTRICT OF SOUTH DAKOTA SS CERTIFICATE OF REPORTER
 3 CENTRAL DIVISION

* * * * *

3 I, Cheryl A. Hook, Official United States District
 4 Court Reporter, Registered Merit Reporter, Certified Realtime
 5 Reporter and Notary Public, hereby certify that the above and
 6 foregoing transcript is the true, full, and complete
 7 transcript of the above-entitled case, consisting of pages 1
 8 through 72.

9 I further certify that I am not a relative or
 10 employee or attorney or counsel of any of the parties hereto,
 11 nor a relative or employee of such attorney or counsel; nor
 12 do I have any interest in the outcome or events of the
 13 action.

14 IN TESTIMONY WHEREOF, I have hereto set my hand
 15 and official seal this 28th day of April, 2017, at Pierre,
 16 South Dakota.

/s/ Cheryl A. Hook

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